

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

CW Professional Services, LLC  
d/b/a Lochbridge,

Plaintiff,

Case No.

v.

Hon.

BFN Operations, LLC  
d/b/a Berry Family Nurseries,

Defendant.

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Colin M. Battersby (P71283)  
Miller, Canfield, Paddock and Stone,  
P.L.C.  
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*Attorneys for Plaintiff*

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**COMPLAINT AND JURY DEMAND**

Plaintiff CW Professional Services, LLC, d/b/a Lochbridge (“Lochbridge”) states as follows for its Complaint against Defendant BFN Operations, LLC, d/b/a Berry Family Nurseries (“Berry”):

**Parties and Jurisdiction**

1. Lochbridge is a Delaware limited liability company that is wholly owned subsidiary of CW Professional Services BV, a Dutch private limited liability company.

2. Berry is a Delaware limited liability company that is, upon information and belief, a wholly owned subsidiary of Insight Equity LP, a Texas limited partnership.

3. The amount in controversy is in excess of \$75,000.

4. There is complete diversity of citizenship among the parties.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because, as set forth more fully below, a substantial part of the events giving rise to the claims occurred within this judicial district.

### **General Allegations**

7. Berry and Compuware Corporation entered into a Professional Services Agreement on July 25, 2013 for consulting services in connection with deployment of third-party software. The Agreement is attached as Exhibit A.

8. Lochbridge is the successor in interest to Compuware and assumed the Professional Services Agreement with Berry.

9. Pursuant to the Agreement, Lochbridge assigned four individuals to work under Berry's direction, control and supervision. The work was performed remotely from Lochbridge's office in Detroit, Michigan.

10. The Agreement provided for Berry to be invoiced on a monthly basis for services provided and for payment to be made within 30 days of invoice.

11. The Agreement also provided that each invoice “shall be deemed accepted” by Berry unless objected to in writing within seven days of receipt.

12. Lochbridge invoiced Berry on 7/14/2014, 8/15/2014, 9/11/2014, 10/13/2014, 12/8/2014, 12/29/2014, 1/12/2015, 1/3/2105, 1/13/2015 and 2/11/2015 for services provided totaling \$297,210.44.

13. Berry did not object to any invoice at any time.

14. On April 3, 2015, confirming Berry’s agreement with respect to the total amount owed, Natalie Kime, Berry’s Director of Finance, provided a payment schedule by which Berry would make full payment on the invoiced sums.

15. Berry made the first three scheduled payments and partial payment on the fourth, but has not made any of the other scheduled payments.

16. On July 7, 2015, Ms. Kime indicated to Lochbridge that Berry would resume its payments if it obtained funding from its bank, but no further payments have been made.

17. To date, Berry has only paid \$90,662.11 for services rendered, leaving an outstanding balance owed to Lochbridge of \$206,548.33.

18. On July 17, 2015, Lochbridge provided Berry with a Notice of Breach pursuant to Section 5(i) of the Agreement.

**Count I – Breach of Contract**

19. Lochbridge incorporates by reference the allegations in paragraphs 1-18 above.

20. The Agreement is a contract between Lochbridge and Berry.

21. Lochbridge provided professional services to Berry pursuant to the Agreement in the amount of \$297,210.44 for which Berry was obligated to pay Lochbridge.

22. Lochbridge invoiced Berry in accordance with the Agreement and Berry never objected.

23. To date, Berry has only paid \$90,662.11 for services rendered, leaving an outstanding balance owed to Lochbridge of \$206,548.33.

24. Berry's failure to pay Lochbridge all amounts invoiced is a material breach of contract.

25. Lochbridge has been damaged by Berry's material breach in the amount of \$206,548.33.

WHEREFORE Lochbridge requests judgment in the amount of \$206,548.33, plus interest, costs and attorneys' fees incurred in bringing this action.

**Count II – Account Stated**

26. Lochbridge incorporates by reference the allegations in paragraphs 1-25 above.

27. Lochbridge provided consulting services to Berry pursuant to the Agreement on an open account.

28. Lochbridge invoiced Berry for the services provided and Berry did not object to the invoices.

29. The current balance on the account is \$206,548.33. Attached hereto as Exhibit B is the affidavit of Robert Darragh, Chief Financial Officer of Lochbridge, which attaches and incorporates by reference the account and supporting invoices.

30. Berry has, through discussions regarding repayment plans, explicitly acknowledged the correctness of the current balance.

31. An account stated exists that obligates Berry to Lochbridge in the amount of \$206,548.33.

WHEREFORE Lochbridge requests judgment in the amount of \$206,548.33, plus interest, costs and attorneys' fees incurred in bringing this action.

### **Count III – Unjust Enrichment**

32. Lochbridge incorporates by reference the allegations in paragraphs 1-21 above.

33. Lochbridge's consulting services in connection with deployment of third-party software conferred a benefit upon Berry.

34. Berry was aware of the benefit conferred upon it by Lochbridge.

35. Berry has retained the benefit conferred upon it under circumstances where it is unjust for it to do so without payment for it.

36. Berry has been unjustly enriched to Lochbridge's detriment in the amount of \$206,548.33.

WHEREFORE Lochbridge requests judgment in the amount of \$206,548.33, plus interest, costs and attorneys' fees incurred in bringing this action.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND  
STONE, P.L.C.

By: /s/Colin M. Battersby  
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Dated: October 7, 2015

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**JURY DEMAND**

Plaintiff CW Professional Services, LLC, d/b/a Lochbridge, hereby demands  
a trial by jury of all issues so triable.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND  
STONE, P.L.C.

By: /s/Colin M. Battersby  
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Dated: October 7, 2015

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